

Abstract or Abridgment,

O F

A Decree Made, and often Confirmed in the High Court of Chancery, concerning the Payment of a Tyth or 10th. Part of Lead-Oar in the County of Derby.

CAROLUS Secundus Dei Gratiâ, Angliæ, Scotiæ, Franciæ & Hiberniæ Rex, Fidei Defensor, &c. Georgio Savile, Willielmo Savile, Jacobo Hopkinson, Rogero Newton, Alveredo Motteram, Generosis, ac cuicunq; Personæ sive quibuscunq; aliis Personis quos Decretum vel finale Judicium aliququaliter tangit, sive concernit & eorum Cuilibet salutem: Cum quoddam finale Judicium sive Decretum coram Nobis in Curiâ nostrâ Cancellariæ antehac fact' extitit in hæc Verba.

WHEN before this Time, that is to say, in the Term of St. Michael, Anno Dom. 1628, Richard Carrier, Clerk, Vicar of Wirksworth in the County of Derby, Complainant, Exhibited his Bill of Complaint into the High and Honourable Court of Chancery against Ephraim Fern, Richard Wigley,

A

Anthony

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Anthony Coates, and William Debanks, Defendants; declaring by the same, That whereas the Complainant and all his Predecessors, Vicars of Wirksworth, Time beyond the Memory of Man, have had, and received, and used to have and receive, and do of right, ought to have and receive a certain Customary Duty of all the Lead-Oar or Lead-Mine, which had been gotten within the said Parish of Wirksworth, dressed and cleansed from the Earth and Rubbish, at and by the only Costs and Labours of the Miners and Getters of the said Oar and Lead-Mine, the said Complainant and his Predecessors allowing to the said Miners and Getters of the said Oar and Lead-Mine only one Penny for the dressing, cleansing and washing every the said 10th. Dish without Interruption of any Man, until about the 18th Year of the Reign of K. James I.

The first Suit
in the Exchequer
Court.

At which time the said Complainant exhibited his English Bill into the Court of Exchequer-Chamber, against divers Miners who refused to pay this Duty: The Miners being served with Subpoena's from that Court, appeared in Michaelmas Term (18^o Jacobi) but gave no Answer.

Removed (to-
gether with
the Suits of
other Propri-
etors) to the
Privy Coun-
cil

The Miners upon their Petition to the Privy Council obtained an Order, dated 22d of November, Anno 18^o Jacobi Primi, to stay the Suit in the Exchequer Court, and to bring it before the Council, where also the Proceedings at Law of John Gell Esq; (afterwards Sir John Gell Barr.) for one third part of the Tyth-Oar, and of Sir Francis Leak (then Knight, afterward Lord Deincourt) for the other two parts of the Tyth-Oar in the Parishes of Bakewell, Tiddeswall and Hope, in the hundred of High Peak in Darbyshire, were then, and for divers Years before had been stayed.

And

And the whole Cause concerning the Tyth or Tenth of Lead-Ore within the said County of Darby, was then stayed at the Council-Board upon suggestion by the Miners of some Point of State: So that divers Ministers, Parsons and Vicars, within the said County, who had a great Part of their Maintenance out of the said Tenth of Lead-Ore, were forced to forbear all Proceedings at the Law for the same, and to be content to live without the same, during the time that the Matter was in question at the said Council Board.

The Cause of Tyth-Ore for the whole County before the Council.

And thereupon The Custom of the Payment of the said Tyth or Tenth of Lead-Ore, being claimed to be all one and the same in all Parishes within the said County of Darby, where the said Lead-Ore is gotten.

The Custom for this Tyth one and the same throughout the County.

Their Lordships for the avoiding Multiplicity of Suits, which otherwise would have ensued, & for the final settling of this Cause, thought fit for the whole County, as well concerning the Parsons and Vicars, as other Proprietors of the said Tyth and Customary Duty of Lead-Ore, to refer the said Custom to a Tryal at Common Law, which accordingly was done by an Order of that Court of 26th of November, Anno Domini 1619, (with special Directions how and in what manner the said Trial should be brought on and tryed) and that onely the said Custom should be given in Evidence, and both Parties to insist thereupon.

The Councils Directions for Tryal of the general Custom.

This Tryal was had at the Common-Pleas-Bar in Easter-Term 1620, where the Custom was onely in Issue, and both Parties onely insisted thereupon, and after 4 Hours Evidence before the Judges in the hearing the said Cause, A Verdict passed for the said Custom, and with the Plaintiff in that Cause.

A Verdict for the general Custom.

The Miners
litigiously de-
sire a second
Tryal.

After which said Tryal, the Miners not yet satisfied, but endeavouring to weary out the said Complainant, and the rest interested in the said Duty, upon Pretence of having some old Witnesses not before examined, obtained from the Lords of the Council, an Order of the 21st. of June, Anno Dom. 1620, for another Tryal at Common Law, under particular Directions (as before) which Tryal was had at the *Common-Pleas-Bar* in *Michaelmas-Term*, Anno Dom. 1620. upon the very point of the said Custom. And there also upon full and long Evidence, a second Verdict passed for the said Custom, and with the said Plaintiff in that Suit [*viz.* Mr. *John Gell.*]

A second
Verdict for
general Custom.

The Proprietors
Petition
the King.

Notwithstanding which Verdict, the said Complainant [*Carrier*] together with the said Mr. *Gell*, and the Lord *Deincourt*, and the other Ministers interested in the said Customary Duty of the Tyth or Tenth of Lead-Oar within the said County of Derby, in respect they could not quietly enjoy the same according to the said Verdicts, were forced for their Relief against the said Miners, being a Multitude, and making a general Purse, thereby to weary out the said Complainant, and others interested, to petition His Majesty (King *James I.*) for to establish them in the said Tyth or 10th of Lead-Oar as aforesaid.

The King
refers it to
some Lords.

The King refers the Consideration of this to the Archbishop of *Canterbury*, and to the Lord High Treasurer, (afterwards Lord Privy Seal) with *special Directions* that upon due Examination of the Cause, they should take *Effectual Order* for the Petitioners Relief, and to certify what course might be taken to put them in Possession.

According to which Reference, their Lordships having

ving heard the said Cause at large debated thereof, did in July 1621, Certifie unto His Majesty, that they had seen the former Proceedings before the Council, and at Common Law by Directions from the Lords of the Council, that Mr. Gell aforesaid, had prevailed at Law for his 3d part of this Tyth; and the Lord *Deincomre* had obtained a Decree in the Exchequer for the other two 3d parts of this Tyth, in the Parishes of *Bakewell*, *Tiddeſwall* and *Hope*.

So as it appeared unto them Just and fit, that the said Tyths or Tenth should be established according to the said Tryals at Law, and the said Decree in the Exchequer.

The Lords certify the Justice and Equity of the said Custom.

After which Certificate by special Order and Direction from the said King *James I*, by an Order of Council of the 5th. of October 1621, it was Ordered, That the Complainant and all such others as were interested, or had any Right or Title in, and to the Tyth or Tenth of Lead Ore, together with the whole Cause then depending before them, should be clearly discharged and dismissed from the said Council-Board, and should be left to the full Fruition and Benefit of the Law.

The Cause honourably dismissed from the Council-Table, with a Declaration of the Miners false pretence.

And because the said Complainant and the Rest, had loss by being stayed at the Board, upon Pretence from the Miners of some Point of State, which then appeared to be otherwise: Therefore their Lordships in an Honourable respect of the Complainant and the Rest, did wish that they might have all the Speed and Expedition, which the Law in Justice might afford them.

After which Dismission from the Council-Board in Michaelmas Term next following, being the 19th Year

The Complainants Bill in Chancery.

of

of King James I, the said Carrier exhibited his Bill in Chancery against these Defendants, viz.

Robert Maddox,

Francis Bayley,

Thomas Taylor,

Thomas Goddhere,

Thomas Fogg,

And others,

Miners within the said Parish, naming them in all to be 300 or thereabouts: The said 5 Persons appeared in the said Michaelmas-Term, and took out a *Dedimus* to answer in the Country, returnable in *Hillary-Term* following.

Delays by the
Miners.

The Complainant being thus delayed by a *Dedimus*, petitioned the Lord Keeper for an Injunction, which by an Order of Court of 4th of December, 19 of King James I, was granted against all the Miners in that Parish, requiring them to pay this Tyth as formerly it used to be, until they answered: And after their Answer given in *Hillary-Term* 19 James I, wherein they averred themselves to be more in Number than 300; in *Easter-Term* the Miners prayed, That the Injunction might be changed into a *Sequestration*, The Complainant was ordered to show cause in *Trinity-Term*, why it should not so be.

The Matter was then heard and long debated 3d. July, 20 Jacobi Reg. prim. and then Ordered, that the Defendants and all the Rest, should pay the said Tyth, and that the Injunction should continue in force till hearing, and the Complainant also under an *Injunction* to stay Suits for this in all other Courts.

After all which, and after Bill, Answer, Replication and Rejoynder, Commissions to take Evidence and Publication of the same, together with the Petition and Debates about the Injunction aforesaid (all upon record in Chancery Court.)

The

The Cause now being ready to be heard in Michaelmas-Term 20th of King James I. The then Defendants finding the Proofs to be full against them, desired the Complainant to take a Decree by consent, against them and all the rest of the Miners in that Parish, to pay the said Tyth to the Complainant and his Successors for ever.

The Miners at last suffer a Decree against them, to pass by Consent.

This Decree by consent was accordingly passed that Michaelmas-Term, & subscribed by the then Ld. Keeper.

Unto which Decree, as well the then Defendants as also all others, the Miners within the said Parish of *Wirksworth*, did submit, and did by the space of five Years or thereabouts then next following, pay the said Tyth or Tenth part of Lead-Oar unto the said Complainant.

The Miners Submit to the Decree for some Years.

And likewise since the foresaid Dismission from the Council-Table, the said John Gell had by due Course and Proceedings, obtained a Decree in this Honourable Court (of Chancery) against all the Miners within the Parishes of *Bakewell*, *Tiddefwall* and *Hope*, whereby they were all bound to pay the said 3d. part of the Tyth or Tenth of all Lead, gotten or to be gotten within the said Parishes, unto him the said John Gell and his Heirs for ever.

Other Decrees for other Proprietors.

Which Decree was ratified and confirmed to stand in force against them all, by an Order of Chancery of 27 Maii, 3tio Carol. prim. And the said Mr. Gell was accordingly possessed of the said 3d. part of the said Tyth of Lead-Oar within the said Parishes: And the Miners ever since the said Decree was confirmed by the Order aforesaid, had submitted themselves and duly paid the said Tyths of Lead-Oar to the said Mr. Gell, his Servants or Deputies.

And

Miners bring
a Bill in Par-
liament a-
gainst this
Tyth:

And the said Miners within the said County of Der-
by not yet satisfied with all the said Proceedings at Law,
and at the Council-Table, and in this Honourable
Court, did exhibit their Bill against this Complainant,
and the Rest interested in the said Tyth or Tenth
of Lead Ore, for their Relief into the High Court of
Parliament, holden at *Westminster* 19th February, 21
Jacobi Prim. wherein they did desire that it might be
Enacted, That no Tyth or Tenth of Lead Ore might
be paid in any place whatsoever within the said Coun-
ty of Derby, which Bill was twice read, and Com-
mitted and Reported, and then upon Debate, amongst
the Commons assembled in Parliament, it was upon
Wednesday the 12th of May, 22 *Jacobi Regis Prim.* Re-
jected and cast out.

The Miners
Bill in Parlia-
ment against
this Tyth re-
jected.

Miners pro-
mote new
Suits, and
question the
former De-
cree.

This question
Referred to
the Attorney
General.

Yet notwithstanding all this, in *Easter-Term*, 3tio *Ca-
roli Regis Prim.* Some of the Miners within *Wirksworth*
by sinister Incouragement of some others ill-affected to the
Complainant, did question whether the former Decree
as it was passed and drawn up, ought to oblige all the
Miners in that Parish, or only the then named Defen-
dants, which Question was by Order of *Chancery*, 4to.
Maii, Anno 3tio *Carol. Prim.* referred to Sir Robert Heath
Attorney General, to examine and certifie concerning
it, who upon full Examination, and divers Hearings of the
Matter, in Presence of Council learned on both sides, and
upon Perusal of the said Bill and Answer, Proofs, &c. made
(10th July, 4to *Carol. Regis*,) his Certificate to this Effect,
viz.

Attorney Ge-
neral his Cer-
tificate.

1st. That the Complainant had prayed Process only
against the then named Defendants, yet complaining
therein against all the Miners within that Parish, na-
ming them to be 300 or thereabouts, though the De-
fendants

endants in their Answer, did affirm and set forth that they were more.

2. He found that before the said Answer was made, it being delayed by a *Dedimus*, an Injunction was awarded by the Ld. Keeper against *all* the Miners in that Parish, requiring them to pay this Tyth, which Injunction was upon debate ratified and confirmed, to stand in force till the Cause was heard.

3d. He did find a general Solliciting in the Suit, and a general Contribution of the Miners of the said Parish, against the Complainant to maintain that Suit.

4th. He found that for a time, the said Miners did all submit, and continued some Years to pay this Tyth to the Complainant, but found no Order preceding the said Injunction and Decree, to warrant the Decree against the Miners in general.

5th. And Lastly, he found by the Proofs published in the Cause, and by the Record in the First-Fruits-Office, that the said Tythe or Tenth of Lead Ore, had been time out of mind paid: And by that Record it appeared, that the Vicarage of *Wirksworth* being valued in the King's Book at above 40 Pounds, 30 Pounds thereof was only for the said Tythes of *Lead-Ore*, and therefore

Records of
the First-
fruits Office
of this Tyth

His Opinion was, That if in the Lord-Keeper's Judgment, the Decree, as then drawn up, ought to extend to all the Miners in the said Parish until it be reversed, that then the Complainant should be settled in the possession of those Tythes till that time, and restored to the Arrearages, the Possession being taken away since

the reference. But if the said Decree should not in his Lordships Judgment be extended to any others, but such, as against whom Proceſs was prayed: That then the Lord Keeper should direct a Course for the *final Determination* of that *Question*. (As by that said Decree, Order of Reference and Certificate, all on Record in *Chancery*, and also by the Bill and Proceedings in Parliament, to which the Complainant referreth himself at large, appeareth.)

Upon this Certificate of the Attorney Generals, the Complainant prayed that his Decree before had, might extend to all the Miners in that Parish.

An Order obtained for a new Suit in Chancery.

But in regard the Decree aforesaid was not made upon a *Judicial Hearing*, (but by Consent) the Court directed and ordered, that it should only stand in force against such as *Consented* to it. But yet further Ordered, that Mr. *Christopher Fulwood*, of Council with the Miners, should within a Fortnight after Entrance of that Order, upon notice given, nominate four Miners to be Defendants to a new Bill to be exhibited against them by the Complainant, and what Order or Decree should be made against them Four, the rest of the Miners in that Parish should be Bound by it.

In pursuance of which Order, Counsellor *Fulwood* named the four Defendants, (first mentioned in the beginning of this Decree) viz. *Ephraim Fern*, *Richard Wigley* of *Cromford*, *Anthony Coates*, and *William Debanck*.

The Complainant exhibited his Bill against those four Defendants, to the end, that his Duty and Right to the said Tythe of Lead-Oar, might be settled by Decree of this Court against all the Miners in the said Parish, who not satisfied with the former Proceedings, to put the said Com-

Complainant to further Trouble and Charge, did unconscionably refuse to pay the said Customary Duty of the Tythe or 10th of Lead-Oar, gotten, and to be gotten in the said Parish. And the said four Defendants, having by Casualty, or otherwise, gotten into their own, or some of their Friends hands, divers Deeds, Evidences, Charters, Writings and Records, which would plainly prove the said Complainants Right and Title to the said Tythe or Tenth of Lead-Oar, had of late upon some *causeless Displeasure* by them conceived against the Complainant, and by Plot, Confederacy, and Agreement amongst themselves, wilfully denyed the Payment of the said Tythe of Lead-Oar by them gotten within the said Parish to the Complainant then Vicar of the said Parish of *Wirksworth*. And according to the said Plot and Agreement, had all of them absolutely denyed, and wilfully refused to pay any Tythe or Tenth Part at all to the said Complainant of or for any Lead-Oar gotten by them within the said Parish of *Wirksworth*, sometimes affirming, that the said Tythe of Lead-Oar was a Personal Tythe, and sometimes that the said Complainant ought to take his said Tythe or Tenth Part undressed, as it was drawn up out of the Lead-Mines or Groves, in which they get the same.

Unjust and Vexatious dealings of the Miners set forth.

Whereas in Truth, the said Tythe or Tenth Part of all the Lead-Oar gotten within the said Parish, had (all the Time whereof the memory of Man was not to the contrary) been paid, and of right ought to be paid by Custom and Prescription, in manner and form following.

That is to say, within and over the *Wapontake* of *Wirksworth* in the said County of Derby, (whereof the Mineral Places of *Wirksworth* Parish were, and are

The manner of Payment of this Tyth set forth.

part) there is, & beyond Mans memory has been, a principal Officer for the said Lead Mine, called a Barmaister, by whom all the said Lead that was there gotten, is and ought to be measured before the same were sold or made away. At which Measure the said Barmaister did see the Lot and Cope paid to the Lord of the Field, or of the Mine, and the Proprietors and Owners of the said Tythes or Tenth of Lead Ore for the time being had likewise by all the time aforesaid, received every Tenth Dish or Measure of Lead Ore from the Miners or Getters of the same. And they had always received every the said Tenth Dish, being dressed and cleansed from the Earth and Rubbish, at and by the proper Costs, and Charges, and Labour of the Miners: The Proprietors and Owners of the said Tyth, or Tenth Dish, allowing one Penny unto the Miners for the dressing, washing, and cleansing of every said Tenth Dish.

In which manner the said Tythe or Tenth part of Lead-Ore had been paid as aforesaid, (time beyond the memory of Man) and so of Right ought to be paid.

Custom the
same in all
Parishes.

Which said Custom for payment of the said Tythe, or Tenth of Lead-Ore within all Parishes of the said County of Derby, where the same had been gotten, had been confirmed, ratified, approved, and established by the said several Verdicts, Decrees, Certificates, Orders, and other Proceedings formerly set forth and expressed.

And the said Customary Duty had been so paid in manner as aforesaid, to the said Complainants Predecessors, and to him as Vicar of *Wirksworth*, time out of mind of Man, without any Interruption, Question or
Con-

Contradiction, until of late, that the said 4 Defendants with the rest of the Miners in that Parish, *had combined and confederated themselves* as aforesaid, and did absolutely deny the Payment thereof, and had given out in Speeches, that They would make the said Complainants said Tyth or Tenth part of Lead-Oar, bear the Charges of their Suit; and that if the said Complainant would oppose, and stand out in Law with them, They would make him not worth a Groat; which Opposition and Combination was contrary to all Equity and good Conscience. And would tend to the great Loss and Disinheritance of the said Complainant and his Successors, of the said Tyth or Tenth part of Lead-Oar, if due and speedy Remedy were not had therein.

Illegal Com-
binations of
the Miners.

In tender Consideration whereof, and for Prevention of Multiplicity of Suits, and to avoid further Expences, and to the intent, that a final Decree might be made in the Cause; to conclude, all the Miners within the said Parish of Wirksworth, (according to the Direction of this Court formerly made in that behalf) and the Quiet Possession established and continued with the said Complainant and his Successors, and in regard the Tyth of Lead-Oar was two thirds of the whole Profits of that Vicarage (there being neither Glebe nor Tyth-Corn, nor Tyth-Hay belonging to it) and so the said Church would be disinherited, and the Complainant impoverished, if not timely prevented; Therefore he prayed process of Subpœna against the said 4 Defendants, which being granted, and they served therewith, and after Bill, Answer, Replication, Commissions to examine Witnesses, and Publication, and all other Proceedings (on record in Chancery) had and made. A Day was appointed for Hearing, at which the Defendants being not ready or prepared, as their Council pretended, to go to hear-

Delay of
Hearing by
the Miners.

hearing, a further Day was appointed for hearing the said Cause.

On which Day it then appeared, that a Decree had been taken by *Consent* (as aforesaid) against the 5 former Defendants, *viz. Maddock, Taylor, Fogg, Bayley, and Godbehere*, for Payment of this Tyth to the Complainant by them and the rest of the Miners in that Parish; notwithstanding which, the rest not named Parties then, had refused to be bound by that Decree, whereupon a new Bill was ordered, and 4 new Defendants named, (as abovesaid) by whose Success the Rest should now be concluded, which Cause came now to be heard.

And upon the full hearing and long debate of the matter before the Right Honourable the Lord Keeper, in presence of Council learned on both sides; It appeared, that the constant and general Custom within the said Parish for the space of 50 Years and upwards, had been to pay the said Tyth or 10th Dish of Lead-Oar dressed and cleansed from the Earth and Rubbish, saving that the Lot Dishes had not been reck'ned or accounted as part of that out of which the said Tyth or Tenth should be paid.

Tyth not taken of the Lot-Dishes which are the Kings part.

And the Complainants Council offered to read Depositions of old Witnesses (taken in the former Cause) now dead, to prove this Custom in the said Parish for fourscore Years.

It appeared also by a Copy of a Record in the First Fruits Office, that the Vicarage of *Wirksworth* being valued at above 40 *l. per Annum* in the Kings-Books, 30 *l.* thereof was only for the said Tyths of Lead-Oar.

But

But the onely Question was concerning the Recompence which the Plaintiff and his Predecessors had used to allow to the Miners for cleansing and washing the said Tenth Dish.

Debates about the Recompence for Washing the Tenth dish,

Where it was proved by the Plaintiffs Witnesses, the constant course and usage had been to allow onely a Penny for washing and cleansing the said Tenth Dish.

On the other side it was proved, that some of the Plaintiffs Predecessors had allowed sometimes to the Miners, when their Work fell in hard and rocky Ground, and in places much annoyed with Water, a greater proportion, viz. sometimes Four Pence the Dish; and it was alledged on the Defendants part, that the cleansing of a Dish was worth Eight Pence; And therefore it was against Reason to inforce the poor Miners to do it for a Penny.

Nevertheless His Lordship was well satisfied, notwithstanding any thing objected by the said Defendants Council to the contrary, that the said Complainant ought to be paid his Tyth of Lead-Dar; And that the most constant Custom had been to allow but a Penny for cleansing it.

And that the said Miners of the Parish of *Wirksworth* ought to be in the same state and condition as other the Miners in the High-Peak were; against whom a Decree had been made in this Court, and Tryals at Law upon the Point of Custom for payment of Tythes or Tenth of Lead-Dar as aforesaid.

The Miners in the Wapontake of *Wirksworth* ought to be in the same condition with those in the High-peak

Nevertheless His Lordship considering that the Alteration of times, might beget great Inequality and Disproportion in the said Payment; for although in ancient

ent times, the foresaid rate of a Penny might be a competent Recompence for the labour of washing the said 10th Dish, yet in these times it may be otherwise. And considering, that whatever the Plaintiffs right in that behalf is in Law, according to the strict Custom; yet he could not expect, that *A Court of Equity* should Decree the said Custom in such a point as may tend to the undoing of the poor Miners: Therefore His Lordship thought fit without prejudice to the Plaintiffs Right, or to the aforesaid Custom, if at any time he shall think good to make use thereof at Law; to take such a *middle Course* whereby the Plaintiff *without Multiplicity of Suits*, might have his Tyth by Order of this Court, and yet the poor Miners not be too much pinched by the Rigor or Strictness of the said Custom.

It is therefore this present Day, that is to say, on Saturday the 4th day of July, Anno 5to Regni Caroli Regis, &c. primi. By the Right Honourable Thomas Lord Coventry, Lord Keeper of the Great Seal of England, and by the Authority of the said High Court of Chancery, Ordered, Adjudged and Decreed, that the said Defendants, and all other the Miners, within the said Parish for the time being, and for the Time to come, shall pay to the said Complainant, and to his Successors, Vicars of *Wirksworth* for ever; The Tyth or 10th Dish of All Lead-Oar gotten or to be gotten within the said Parish; dressed and cleansed from the Earth and Rubbish at the Charge and Labour of the Miners.

The Tyth of
Lead-Oar
Decreed.

A Commis-
sion about the
Equity of the
Recompence
for washing
the Tyth, but
without pre-
judice of the
general Cust-
tom.

And as touching the Allowance to be made by the Complainant and his Successors, for washing, dressing and cleansing every 10th Dish; albeit his Lordship doth not intend to alter or controul the ancient Custom in that behalf; yet in regard it tendeth to settle peace and quiet-

quietness hereafter, and for other Reasons before expressed, and because the Councel on both sides could not agree about it: Therefore his Lordship, for his fuller Satisfaction therein, and that a moderate Consideration may be had thereof, if the matter so require, but without prejudice of the General Custom, formerly held, and used in that behalf, thinketh fit, and doth order, that a Commission be awarded to Sir Henry Willoughby, Knt. and Barronet, Sir Henry Lee, Sir Henry Agard, and John Bullock, Esq; or any 3 or 2 of them, to consider and examine, whether a Penny a Dish be a sufficient Recompence, for washing and cleansing every 10th. Dish, one with another, giving them power to view all sorts of Oar, and to examine Witnesses about this Matter, if need be: And upon return of the said Commission and Certificate from his Lordship, will give further Order: Till which time the Complainant is only to pay a Penny for cleansing his Tythe Oar as formerly, and if his Lordship shall order the Miners to have a better Allowance, then the Complainant shall make up and satisfie the same unto them.

Vobis igit' præfat' Georgio Savile, &c. & vest' cuiuslib' firmit' injungend' percipim' qd omnia & singula in Iudicio sive Decreto prædict' content' & specificat' faciatis & perimpleatis -- juxta tenorem, &c. -- sub periculo, &c. Teste meipso apud Westm' 28 Julij Anno Reg' 15.

Grim. Longuivillo:

C

Short

Short Remarks on the aforefaid

D E C R E E.

1st. **B**Y this Record it appears, that the Right and Claim of a Tyth of *Lead-Oar*, is one and the same in all Parishes in Derbyshire, where Lead-Oar is digged; and as such, hath been tried and adjudged at Common Law, upon general Issues and Evidence for avoiding Multiplicity of Suits. For if the Issues and Evidence had not been General, but *Local*, and particular (as of late Years has been attempted) there must have ensued as many several Suits, as there were Parishes, or Proprietors who claim this Tyth.

2^{dly}. By this also appears the illegal Combinations, Confederacies, and other manifold vexatious and unjust Dealings of the Miners, in defending Suits against this Tyth; removing this Cause from one Court to another upon false Suggestions and Pretences; refusing to be bound by former Decrees (though taken by consent against them) on purpose to weary out the Complainants. They have also taken Advantage from the Change or Poverty of divers Incumbents of that particular Parish, to which this Decree relates, to enforce and oblige them to defend, renew, and confirm this very Decree five or six times (since the first beginning of it,) at the Expence and Charge of many hundred Pounds each time.

3^{dly}. By this Record (as well as by the Journals of Parliament to which it refers) it appears, that this Custom for payment of a Tyth of Lead-Oar in all Pa-

Parishes within the County of Derby where it is gotten, hath been examined, debated, & approved amongst the Commons assembled in Parliament, by rejecting and casting out a Bill formerly brought against it: Which we hope will be looked on as a good Precedent to bring this Cause once more before that High and Honourable Court, by a Bill for preventing such Multiplicity of Suits, and final Settling this Tyth in the said County, according to the Tenor, Equity, and Establishment of this and other such like Decrees.

The common Prejudices or Objections which will be urged against the Establishment of this Tyth, are these.

Object. **T**Yth is only due of Things growing or increasing above Ground, and may as well be claimed of Coal-mines or Lime-kilns, as of Lead-Mines.

Ans. Tyth though ordinarily, or of common Right due of things growing above Ground, yet by Custom may be paid of any thing whatever, as is known in many Instances in divers Parts of this Kingdom. Coales and Lime are not under the same Laws, Customs, Privileges, and Acknowledgments of Tyth, as the Lead-Mines in Derbyshire are. Nor do the Ministers or Proprietors of Tyth pay Tenths yearly to the King for Tyth of Coals or Lime, as they expressly do for Tyth of Lead-Ore. And the Objectors know well enough, that in

divers Parishes of *Derbyshire*, where a Tyth of Lead-Oar has been, and is at this day paid, there are Lime-kilns, and in some places Coal-mines also, from which never any Tyth was pretended to be claimed.

This also (we hope) will prevent all Prejudice in such Gentlemen, who have Interest in Mines in other places of the Kingdom, which are not under the same Customs and Priviledges, nor liable to the same Duties with those in *Derbyshire*. This Establishment being only desired for the County of *Derby*, where this Tyth hath been abundantly acknowledged by the whole Body of the Miners, and is in most places paid at this day.

Object. 2d. The payment of this Tyth will injure or obstruct the King's Duty. *Note*, That the King's Duty is called the *Lot and Cope*; The *Lot* is every 13th Dish, or Measure of Oar paid to the King, as Lord of the Field: The *Cope* is in some places 6 pence, in others 4 pence for every Load of Oar, (9 Dishes making up a Load) which is paid by the Buyers of the Oar, as a Composition for the King's Right of *Praemption* of the Oar which he formerly had.

Ans. The *Cope* being paid by the Buyer of Lead-Oar, cannot be at all affected by payment of the Tyth; and the *Lot-dishes* are never reck'ned as part of that out of which Tyth is paid. In the old Laws and Customs of the Lead-mines (which are on Record) the Duties to the Church and King are mentioned always together as necessary Conditions of some Privileges: And we hope the Farmers of his Majesties duty, will not think it their just Interest, to destroy the one, upon pretence of advancing the other; since the payment of each to the distinct Proprietors does best secure the
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Accounts of both, and prevents either from being cheated. For in places where this Tyth is unjustly withheld from the Church, the King is more easily cheated by the Miners, who are as ready to conceal and defraud the King's part (where they can do it) as they are to deny the Churches Right.

Object. 3d. The Payment of this Tyth will ruin the poor Miners, or discourage them from working.

Ans. It is paid in all Parishes adjoyning to the Petitioners, yet has no such effect; nor had it such effect, when it was paid in the Petitioners Parishes. The poor as well as rich Miners have all of them acknowledged the Churches Right, when it was for their Service, either to set out their Privileges, or to obtain a Relaxation of Taxes by such Acknowledgment. But the Clergy have always used the greatest Clemency to the poorer sort of Miners, taking little or nothing from them; and they are ready, and believe it to be their Interest still to use the same Clemency; provided it may not be urged against them, to destroy their Claim at common Law (as of late has been done.) However the Rich Owners and Maintainers of Mines, (who get many hundred pounds yearly out of them, and turn up into barren Heaps, whole Fields of good arable, meadow, and pasture Land, which would otherwise yeild a good Tyth in another kind to the Parson) have no reason to make this Objection: The poor Miners generally working under them, for Wages only.

Note, That both this and the former Objection were formerly considered & disproved before the **Prisby-Council**, when the Cause of Tyth-Oar for the whole County of *Derby* was brought before them by the Miners,

ners, upon pretence of some Point of State, which their Lordships declared to be otherwise.

Object. 4th. Tryals at Common Law have in some places been had, and Verdicts passed against this Tyth.

Ans. These Tryals were upon wrong Issues, directly contrary in their Effect and Intention to the former general Issues directed by the Privy Council for the whole County. The former were for preventing multiplicity of Suits, these latter were for promoting as many Suits as there are Parishes where Lead-Oar is digged. The former Tryals were solemn, by Gentlemen of Worth and Estates at the Common-pleas Barr in Westminster; the latter were by meaner and prejudiced Country-juries, some of them interested in Mines, or related to such as were so. The former were upon full and long Evidence; the latter were upon most false, perjured, and partial Evidence (as shall be made appear if it be examined.) The Miners in these last Tryals swearing for their own Interest against the Payment of this Tyth in that Parish where the Suit was; And then upon the Verdict passed against it there, denying it in 3 or 4 of the neighbouring Parishes also, where till that time it had been constantly paid or compounded for. So that though the Issues in these last Tryals were (contrary to the former Establishments, then not understood by the Plaintiffs) made local and particular; yet the Consequence and Effects of the Verdicts of those Issues, were (contrary to both Law and Equity) made general and universal by denial of this Tyth in neighbouring Parishes.

Object. 5th. The Petitioners have Glebe-Lands and other Tyths and Profits of their Benefices, sufficient for them to live upon, without this Tyth of Lead-Oar. *Ans.*

Answ. We know not what the Objectors are pleased to account sufficient for a Clergy-man's and his Families Maintenance, and to enable him to keep such Hospitality, and exercise such Charity, as in that poor Country is expected from him: But we profess we can gladly be content with the just Rights and Perquisites of our Churches be they more or less; Some of us have not 50 *l. per Annum* clear profits of our Benefices: Others of us not 70 *l.* and none of us (we believe) have 100 *l. per Annum*, except one who has 2 Medieties of the same Parish, which formerly, when the Tyth of Lead-Oar was paid in that Parish, did maintain 2 several Ministers, and their Families, and now though both Medieties are conjoyned, they hardly exceed 100 *l. per Annum*.

But the Opponents of this Duty of Tyth-Oar were alway ready to over-value the poor Clergy's Benefices, and of late to over-tax 'em also, some of them being tax'd at an higher value, than when their Predecessors received this Tyth of Lead Oar. In a Suit against the late Rector of *Matlock*, the Defendants swear (in their Answer) that that Rectory was worth above 100 *l. per Annum* in Tyths, and Rectorial Dues, over and besides the pretended Duty of Tyth-Oar: Some Persons examined as Witnesses in that Suit, swear that Rectory to be worth 100 *l. per Annum* besides or without the Tyth of Lead-Oar: And the Defendants Solicitor in that Cause, instructs their Council to affirm it worth sometimes 120 *l.* and sometime 140 *l. per Annum* without Tyth Oar: And yet to shew the Falshood of all these Affirmations; the present Incumbent of that Parish could never yet Lett or Lease out his Benefice for 70 *l. per Annum*, and he has divers times proffered to Lett it for 60 *l. per Annum*.

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However, all these Objections would be of more force (if they had any at all) against divers Noblemen, Gentlemen, and other Proprietors of Tyth in the said County (who have many Thousands *per Annum* to live upon, And yet (having a just Right and Title to this Tyth) receive more yearly Revenues out of it, than any or all the poor Clergy Petitioners are likely to do. But against those great Persons these Objections are never made. It may be further added here, That the Petitioners prædial Tyth of Corn, Hay or Grass, is yearly hindred and decreased by the multiplying of Groves or Mines in their Parishes, which spoil the Land, and make it barren. And lastly, the chief Proposers of this Objection, who are the rich Owners and Maintainers of Mines, have gotten great Estates out of the Mines, of more yearly value, than any of the Petitioners Benefices amount unto in the whole profits of all their Tyths together.

This we hope will satisfie all just and charitable Gentlemen of the Justice of our Cause, and the Wrong which We and our Churches suffer.

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